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IN THE

Supreme Court of the United States

OCTOBER TERM, 1949.

NO. 347 - 348 - 349

In re: Petition in Appeal of JONES & LAUGHLIN STEEL CORPORATION from Resolution adopted July 6, 1948, by School District of the Borough of Centerville, a political subdivision, at No. 295 May Sessions, 1948. (Appeal of School District of Borough of Centerville at No. 113 March Term, 1949, in the State Supreme Court.)

In re: Petition in Appeal of JONES & LAUGHLIN STEEL CORPORATION from Resolution adopted July 6, 1948, by School District of the Borough of Centerville, a political subdivision, at No. 296 May Sessions, 1948. (Appeal of Jones & Laughlin Steel Corporation at No. 119 and 121 March Term, 1948, in the State Supreme Court.)

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF PENNSYLVANIA.

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INDEX TO PETITION.

	PAGE
Petition for Writ of Certiorari	1
Jurisdiction	2
Questions Presented	2
Statutes Involved	3
Statement of Facts	3
Manner in Which Federal Questions Were Raised	3
Reasons for Granting the Writ	5
I.	5
II.	7
Conclusion	8
Appendix	10

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PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF PENNSYLVANIA.

To the Honorable Fred M. Vinson, Chief Justice of the United States, and the Associate Justices of the Supreme Court of the United States:

Petitioner respectfully prays that a writ of certiorari be issued to review the final order of the Supreme Court of Pennsylvania, entered on June 24, 1949, dismissing an appeal by the petitioner from a final order by the Court of Common Pleas of Washington County, Pennsylvania, entered on the 31st day of January, 1949.

Jurisdiction.

The jurisdiction of this Court is invoked under Section 237 of the Judicial Code, as amended (28 U. S. C. A. Sec. 344.)

Questions Presented.

The questions presented for review by this Court are:

1. Did the Supreme Court of Pennsylvania err in holding that the Resolution of the School District imposing a tax of five cents per ton for the privilege of dumping or unloading of slate, stone, slag or other waste materials from the mining of coal or from the manufacture of steel was void, and was said ruling in violation of the due process clause of the Federal Constitution?

2. Did the Supreme Court of Pennsylvania err in holding that the Resolution of the School District imposing a tax on the transportation of coal through the Borough was invalid because the property sought to be taxed did not have an actual situs within the boundaries of said School District, and was said ruling in violation of the due process clause of the Federal Constitution?

3. Did the lower court of Washington County err in holding that a tax on the transportation of coal through said school district was invalid because said tax interfered with interstate commerce? (Supreme Court did not rule on this question.)

4. Did the lower court of Washington County err in holding that a tax upon the transportation of coal through said school district was unreasonable as said tax may be subject to duplication by other adjoin-

ing districts, and was said ruling in violation of the petitioner's rights under the Fourteenth Amendment to the Constitution of the United States? (Supreme Court did not rule on this question.)

Statutes Involved.

The relevant portions of the pertinent statutory provisions are set forth in the Appendix to this petition.

Statement of Facts.

The facts of this case are set forth in a copy of the record used in the appeal to the State Supreme Court and is attached to this petition, and will be found in said record, pages 22a to 27a.

The Manner in Which Petitioner Raised in the Courts Below, The Federal Questions Sought to Be Reviewed.

In the petition filed by Jones & Laughlin Steel Corporation, a taxpayer, No. 296 May Sessions, 1948, in the Court of Quarter Sessions of Washington County, Pennsylvania, said taxpayer objected to the validity of a tax on waste material by alleging that the tax sought by said resolution was confiscatory and was a taking of property without due process. The Court of Common Pleas held that the tax was not confiscatory and was not a taking of property without due process of law.

The Supreme Court of Pennsylvania held that the Resolution was void because the School District taxed a privilege which was already taxed by the state.

In the petition filed by Jones & Laughlin Steel Corporation, a taxpayer, at No. 295 May Sessions, 1948, in the Court of Quarter Sessions of Washington County, Pennsylvania, said taxpayer objected to the validity of a tax on transportation of coal as confiscatory and as a deprivation of property without due process.

The Jones & Laughlin Steel Corporation also alleged in the lower court that a tax on waste materials was an unreasonable burden on the taxpayers' product as it moved in interstate commerce. The lower court held that the tax on the dumping of waste material has no connection with interstate commerce and, therefore, is not a burden on interstate commerce. This objection was also raised by Jones & Laughlin Steel Corporation in its brief with the Supreme Court of Pennsylvania. The Supreme Court did not rule on this objection.

The Jones & Laughlin Steel Corporation also alleged in the lower court that a tax on the transportation of coal as it moved through the school district of Centerville Borough was an unreasonable burden on the taxpayers' coal as it moved in interstate commerce. The lower court held that "the terms of the resolution are broad enough to include all coal transported through the Borough of Centerville by public carriers in the course of interstate commerce. This placing of a burden on interstate commerce by various municipalities and school districts is not permissible."

The Jones & Laughlin Steel Corporation also objected to the tax on transportation of coal for the reason that there was no situs of said coal in the District. This was argued at length in the brief filed by said taxpayers in the lower court. Your petitioner also discussed this

question in the brief filed with the State Supreme Court. The lower court held this tax invalid because "coal being transported through the taxing district does not have any location or situs within the limits of that political subdivision, whether it be by public carrier, by means of mine tracks, or on trucks operated on public highway." The Supreme Court sustained the lower court on the above contention.

Reasons for Granting the Writ.

The questions involved in this case are substantial, involving the right to impose a tax under a state statute and involving the question of due process of law under the Federal Constitution. It also involves the question of taxing property that has a situs in said school district. It likewise, involves the question of whether or not the tax is confiscatory and unreasonable.

I.

The first question involved in this case is whether a school district may pass a resolution imposing a tax upon the privilege of dumping slate and other waste material from the process of coal mining, where in this case the taxpayer is not engaged in coal mining in said school district but causes all of its slate and other waste material to be transported by river barges into said school district. There is no substantial dispute as to what is involved in this controversy.

It has been agreed by counsel to both parties that all of the slate and other refuse comes into said district by barge from outside the district. The lower court held

that the tax on the privilege of dumping said waste material was a reasonable one and therefore valid. The reason being that the dumping of said waste material into said school district causes the depreciation of the assessed value of real estate.

Petitioner further states that the dumping of slate material in said school district not only causes depreciation in assessed valuation of real estate but also causes the school district to receive less taxes, due to the decreased valuation of real estate. It also causes a nuisance and a fire hazard.

The tax was passed in order for said school district to raise additional revenue in order to meet the increase in teachers' salaries and increased costs of school supplies and repairs to school buildings. The lower court states in its opinion that Act No. 481 was passed to grant financial relief to school districts over the entire state and enable them to meet the problem of increased costs of operations without adding the burden of taxation upon real estate.

The Jones & Laughlin Steel Corporation is the only corporation engaged in the mining of coal in said school district. It is also the only corporation engaged in dumping slate waste in said district. It at one time was the owner of hundreds of homes where coal miners lived and rented said homes. Today all of the homes have been sold and the coal company pays very little taxes. The school board was of the opinion that the corporation should pay its just share of taxes and, therefore, imposed this tax.

We believe that under these circumstances the Supreme Court, in holding this taxing resolution invalid,

has disputed the taxing authority of its right under the Fourteenth Amendment to the Constitution of the United States. This is our position particularly in view of the fact that similar resolutions, passed under the same Act involved in this controversy, were approved by the Supreme Court of Pennsylvania, prior to the time of the adoption of the present resolution. The present taxing authority then passed its resolution, prepared its budget, ear-marked its revenues from said taxing resolutions and made commitments to its teachers and various employees on the basis of said tax revenues.

II.

The second issue in this case involves the right to tax coal as it is being transported through the school district.

The lower court and the Supreme Court held that there was no situs of said coal in the district and that therefore, it could not be taxed.

Petitioner refers to the agreed facts of this case that the corporation was engaged in the mining of coal in said school district. The record discloses that the Plaintiff Corporation had mined 121,500 tons of coal in said district during the period covered by said resolution. The lower court improperly held that there was no situs of the coal in the district. This was sustained by the Supreme Court.

It was admitted by both parties to this proceeding that approximately ninety-five per cent of the coal transported through Centerville School District was being used by the corporation at its manufacturing plants located in Allegheny County, Pennsylvania, and that no

coal was ever transported into other states from Pennsylvania, therefore, petitioner contends that the coal had an actual situs as it was being transported through the said district and therefore was taxable by your petitioner. (See *Coe v. Errol,* 62 New Hampshire, 303, affirmed in 116 U. S. 517.)

Under these admitted circumstances, it is contended that the rights of the said school district as a taxing authority have been violated by the interpretation of said statute and that the rights of the petitioner under the Fourteenth Amendment to the Constitution of the United States have been abridged.

Conclusion.

These issues are all substantial ones. They affect the Constitutional rights of the petitioner and their rights depend upon the interpretation of the Fourteenth Amendment to the Constitution of the United States, and should therefore be passed upon by this Court.

The petitioner is a municipal sub-division which is in financial straits, and the outcome of this controversy will affect almost every individual and citizen of the taxing district.

While the petitioner realizes that it has no constitutional right to rely on previous decisions of the State Supreme Court in upholding general propositions of law once adopted will remain unchanged, your petitioner claims that a prior decision of the State Supreme Court led it to adopt its resolution and subsequently to adopt its budget based on said resolution. Under these circumstances we contend that it is a denial of the rights of the petitioner under the due process clause of the Con-

stitution of the United States to subsequently hold said resolution invalid, thereby disrupting the financial stability of the petitioner and affecting the education of all the free school students of the district.

Although this is the only appeal to the Supreme Court of the United States, the decision in this case will affect hundreds of similar school districts in the State of Pennsylvania, first-class townships and boroughs in said state, all of which have passed similar resolutions and ordinances under the same Act of Assembly of the Commonwealth of Pennsylvania.

Respectfully submitted,

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APPENDIX.

Section 1 of Act 481 passed June 25, 1927, P. L. 1145, 53, P. S. 2015.1.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. The duly constituted authorities of cities of the second class, cities of the second class A, cities of the third class, boroughs, towns, townships of the first class, school districts of the second class, school districts of the third class, and school districts of the fourth class, shall have the authority, by ordinance or resolution, for general revenue purposes, to levy, assess, and collect, or provide for the levying, assessment, and collection of such taxes on persons, transactions, occupations, privileges, subjects, and personal property, within the limits of such political subdivision, as it shall determine, except that such local authorities shall not have authority by virtue of this act to levy, assess, and collect, or provide for the levying, assessment and collection *of any tax on a privilege, transaction, subject, occupation,* or *personal property which is now or does hereafter become subject to a state tax or license fee, nor have authority* to levy, assess, or collect a tax on the gross receipts from utility service of any person or company whose rates and services are fixed and regulated by the Pennsylvania Public Utility Commission, nor have authority, except on sales of admission to places of amusement or on sales or other transfers of title or possession of property, to levy, assess, or *collect a tax on the privilege of employing such tangible property as is*

now or does hereafter become subject to a state tax. If, subsequent to the passage of any ordinance or resolution under the authority of this act, the General Assembly shall impose a tax or license fee on any privilege, transaction, subject, or occupation, or on personal property or on sales of admission to places of amusement or on sales or other transfers of title or possession of property taxes by any such political subdivision hereunder, the act of assembly imposing the state tax thereon shall automatically vacate the ordinance or resolution passed under the authority of this act as to all taxes accruing subsequent to the end of the current fiscal year of such political subdivision. It is the intention of this section to confer upon such political subdivision the power to levy, assess, and collect taxes upon any and all subjects of taxation which the Commonwealth has power to tax but which it does not now tax or license, subject only to the foregoing provision that any tax upon a subject which the Commonwealth does hereafter tax or license shall automatically terminate at the end of the current fiscal year of the political subdivision.

The aggregate amount of taxes annually imposed by enactment of an ordinance or resolution by any political subdivision under this section shall not exceed an amount equal to the product obtained by multiplying the total assessed valuation of real estate in such political subdivision at the time of the said enactment by the maximum millage of tax thereon allowed by law.

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CHARLES ELMORE C

IN THE

Supreme Court of the United States

OCTOBER TERM, 1949

NOS. 347, 348 AND 349.

SCHOOL DISTRICT OF THE BOROUGH OF CENTERVILLE, Petitioner,

v.

JONES & LAUGHLIN STEEL CORPORATION, Respondent.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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INDEX.

PAGE

Statement of the Case 1

Argument 6

The Petition for Writ of Certiorari Makes no Argument Concerning the Severance Tax 6

There is no Federal Question Involved 6

General 6

The Rulings Questioned by the Petition Involve no Deprivation of Due Process 7

The Contentions Advanced in the Petition with Respect to the Transportation Tax are Without Merit 11

Arguments Presented in the Petition Based on the Alleged Importance of the Case and on Considerations of Hardship are Without Foundation in the Record, Involve no Federal Question, and are Without Merit 15

Conclusion 17

TABLE OF AUTHORITIES.

Cases.

Bailey v. Anderson, 326 U.S. 203, 206, 90 L. Ed. 36 (1945) 15

Brinkerhoff-Faris Trust & Savings Co. v. Hill, 281 U.S. 673, 680, 74 L. Ed. 1107, 1113 (1929) 8, 10

Clarke v. McDade, 165 U.S. 168, 172, 41 L. Ed. 673, 674 (1897) 8

CASES PAGE

Dawson v. Kentucky Distilleries & Warehouse Company, 255 U.S. 288, 65 L. Ed. 638 (1921) 12

A. E. Dick Contracting Company v. Hazle Township School District, 362 Pa. 387, 65 A. 2d 381 (1949) 10

Dunkard Township School Tax Case, 359 Pa. 605, 60 A. 2d 39 (1948) 10

English v. Robinson Twp. School District, 358 Pa. 45, 55 A. 2d 803 (1947) 9, 10

Georgia Railway and Power Co. v. Decatur, 262 U.S. 432, 438, 67 L. Ed. 1065, 1073 (1922) 8

Greenough v. Tax Assessors of Newport, 331 U.S. 486, 489, 91 L. Ed. 1621, 1625 (1947) 8

Hampton Township School District Case, 262 Pa. 395, 67 A. 2d 376, (1949) 4, 6, 10, 12

Honeyman v. Hanan, 300 U.S. 15, 18, 81 L. Ed. 477, 479 (1937), appeal dismissed, 302 U.S. 375, 82 L. Ed. 312 (1937) 15

Jamison Coal & Coke Co. v. Unity Township School District, 362 Pa. 389, 66 A. 2d 759 (1949) 10

Keator v. Clearview Coal Co., 256 Pa. 328, 331, L.R.A. 1917E, 672, 100 Atl. 820 (1917) 12

Lawrence Township School District Tax Case, 362 Pa. 377, 67 A. 2d 372 (1949) 10

Mulligan v. School District of Hanover Twp., 241 Pa. 204 (1912) 9

Pearson v. Probate Court of Ramsey County, Minnesota, 309 U.S. 270, 273, 84 L. Ed. 744, 749 (1940) 8

Pennsylvania Coal Co. v. Mahon, 260 U.S. 393, 67 L. Ed. 322 (1922) (Reversing 274 Pa. 489) 12

Peoples Natural Gas Co. v. Pittsburgh, 317 Pa. 1, 175 Atl. 691 (1934) 12

CASES PAGE

Prairie Oil & Gas Co. v. Ehrhardt, 244 Ill. 634, 91 N.E. 680 (1910) 12
Railroad Commission of California v. Los Angeles Railway Corp., 280 U.S. 145, 152, 74 L. Ed. 234, 310 (1929) 8
Richfield Oil Corp. v. State Board of Equalization, 329 U.S. 69, 84, 91 L. Ed. 80, 93 (1946) 8
Socony Vacuum Oil Company, Inc. v. Borough of Edgewater, 23 N.J. Misc. 199, 42 A. 2d 775 (1945) 12
Southwestern Bell Telephone Co. v. Oklahoma, 303 U.S. 206, 212, 82 L. Ed. 751, 755 (1937) 14, 15
Thompson v. Kreutzer, 112 Miss. 165, 72 So. 891... 12
Thompson v. McLeod, 112 Miss. 383, 73 So. 193, L.R.A. 1918C, 893, Ann. Cas. 1918A 674 (1916) 12
Williams v. Kaiser, 323 U.S. 471, 473, 89 L. Ed. 398, 401 (1944) 8
Wilson v. Cook, 327 U.S. 474, 480, 482, 483, 90 L. Ed. 793, 799, 800, 801 (1946) 15
Wilson v. Philadelphia School District, 328 Pa. 225, 195 Atl. 90 (1937) 9

Statutes.

Section 1257 of the Judicial Code, 28 U.S.C. 1257.. 7
Act of June 25, 1947, P. L. 1145, 53 P.S. 2015.1 et seq., (Pennsylvania) 2
Act No. 246 of 1949, (Pennsylvania) 16

Other Authorities.

Pennsylvania Supreme Court Rules, Nos. 84 and 86 7
McQuillin, Municipal Corporations, § 138..... 9
Annotation, 110 A.L.R. 724..... 12
61 C.J. 529 (Taxation § 642)..... 12

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NOS. 347, 348 AND 349.

SCHOOL DISTRICT OF THE BOROUGH OF CENTERVILLE, Petitioner,

v.

JONES & LAUGHLIN STEEL CORPORATION, Respondent.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

STATEMENT OF THE CASE.

The Petition for Writ of Certiorari filed in these cases represents an attempt by a Pennsylvania school district (a political subdivision of the Commonwealth of Pennsylvania) to obtain this Court's review of a decision of the Supreme Court of Pennsylvania which invalidated three taxes, hereinafter described, on the ground that a legislative grant of taxing power to school districts did not empower the district to levy the taxes in question.

The cases arose out of statutory appeals by respondent, Jones & Laughlin Steel Corporation, to the Court of Quarter Sessions of Washington County, Pennsylvania, from several taxing resolutions adopted by petitioner school district, a third-class school district, under

authority of so-called Act 481 passed in 1947 by the Pennsylvania General Assembly (Act of June 25, 1947, P. L. 1145, 53 P.S. 2015.1 *et seq.*).

Act 481 enlarged the taxing powers of certain political subdivisions of the Commonwealth of Pennsylvania, including third-class school districts, but it makes certain specific exclusions from the taxing power so granted. Section 1 of the statute reads in part:

> "* * * taxes on persons, transactions, occupations, privileges, subjects, and personal property, within the limits of such political subdivision, as it shall determine, *except that local authorities shall not have authority by virtue of this Act to levy* * * * *any tax* * * *
>
> *"on a privilege, transaction, subject, occupation or personal property which is now or does hereafter become subject to a State tax or license fee* * * *
>
> "* * * *nor have authority* * * * *to levy, assess or collect a tax*
>
> *"on the privilege of employing such tangible property as is now or does hereafter become subject to a State tax.* * * *." (Arrangement and emphasis ours)[1]

The petitioner school district passed resolutions purporting to tax:

1. "* * * the privilege or transaction of all coal mined or severed from the ground of Centerville Borough * * * or for the privilege or

---

[1]Section 1 of the statute is printed as the Appendix to the Petition for Writ of Certiorari.

transaction of the transportation of all coal mined without the boundaries of Centerville Borough but transported within or through the boundaries of Centerville Borough * * *." (Cases No. 121 and 113 March T. 1949 in the Pennsylvania Supreme Court) (The taxes imposed by this resolution are referred to herein as the "severance tax" and the "transportation tax", respectively.)

2. "* * * the privilege or transaction of the dumping or unloading of all slate, stone, slag, cement and other waste material from the mining of coal or from the manufacturing of steel, * * *." (Case No. 119 March T. 1949 in the Pennsylvania Supreme Court) (The tax imposed by this resolution is referred to herein as the "dumping tax.")

On respondent's appeal from these resolutions the Court of Quarter Sessions of Washington County upheld the severance and dumping taxes and held the transportation tax invalid.

The orders upholding the severance and dumping taxes were appealed to the Supreme Court of Pennsylvania by Jones & Laughlin Steel Corporation, and the order invalidating the transportation tax was appealed to that court by the school district.

The Supreme Court of Pennsylvania held all three of the taxes to be invalid. The basis for the Court's ruling is succinctly set out in a single paragraph reading as follows:

"As was pointed out in the case of the Hampton Township resolution the Act of June 25, 1947, P. L. 1145, denied authority to the local bodies to impose

a tax on 'the privilege of employing such tangible property as is now or does hereafter become subject to a State tax.' Since Jones & Laughlin Steel Corporation pays a capital stock tax and also a corporate net income tax to the Commonwealth all of its property and assets are subject to a State tax, and therefore, by the express prohibition of the 1947 Act, the School District of Centerville Borough may not impose a tax on the privilege of mining coal or of conducting any operation which is a constituent part of such mining. The dumping of the waste materials of the mine is a necessary part of the process of mining, and therefore a tax on the privilege of that operation also falls under the ban of the statutory provision. Moreover, the dumping of waste on the corporation's own land is a use or employment of that land, and therefore, for that reason also, the privilege of such employment is not subject to local taxation. As far as the tax on the transportation of coal within or through the Borough is concerned, such a tax is clearly invalid because only such property is taxable as has an actual situs within the boundaries of the taxing district as distinguished from a merely momentary or temporary location there, and therefore it is generally held that property in transit through a taxing district is not subject to local taxation: see 61 C.J. 529, 530 [§ 642] g; 110 A.L.R. 724-726." (362 Pa. 400, 402, 67 A. 2d 378, 379)

The Court in the above quoted portion of the opinion refers to the Hampton Township resolution considered in *Hampton Township School District Case,* 262 Pa. 395, 67 A. 2d 376, decided the same day as the instant cases. The opinion in the *Hampton Township* case out-

lines at somewhat greater length the basis for the decision of the Supreme Court of Pennsylvania in the cases at bar. The Court there said:

> "The resolution, passed on July 6, 1948, imposed a tax of ten cents per ton 'upon the privilege, transaction or occupation of mining and/or severing from the ground coal * * * in Hampton Township,' and also a tax in that same amount 'upon the privilege, transaction or occupation *of bringing to the surface* of the ground coal within the limits of Hampton Township, mined or severed from the ground beyond the boundaries of Hampton Township.' * * *
>
> "Butler Consolidated Coal Company conducts the only coal mining operation in Hampton Township. It is a corporation paying a capital stock tax to the Commonwealth, which is a tax on all of its property and assets and a corporate net income tax which is likewise a property tax: *Lawrence Township School District Tax Case,* 362 Pa. 377, 67 A. 2d 372. Since the coal in place (and also when severed from the ground) is 'tangible property', and since, as just stated, it is subject to a State tax, it would seem inevitably to follow, from the express inhibition of the statute, that the School District may not tax the privilege of 'employing' it, that is, developing it for commercial purposes.
>
> * * *
>
> "As far as the section of the Hampton Township resolution is concerned which imposes the tax on the privilege, transaction or occupation *of bringing to the surface of the ground* within the limits of the Township coal mined or severed *from the*

ground beyond the boundaries of the Township, it is clear that bringing the coal to the surface is not only a component but an essential part of the operation of mining. According to Webster's New International Dictionary, to 'mine' is 'to get ore, metals, coal, or precious stones, out of the earth.' *The statutory prohibition of the right to tax the privilege of mining the coal necessarily includes and carries with it a prohibition of the right to tax the privilege of performing any constituent part of that operation."* (Italics ours)

ARGUMENT.

The Petition for Writ of Certiorari Makes no Argument Concerning the Severance Tax.

The Court's attention is respectfully directed to the fact that the Petition for Writ of Certiorari does not touch upon the decision of the Supreme Court of Pennsylvania invalidating the severance tax. This tax was the subject of the Appeal at 121 March Term, 1949, in the Supreme Court of Pennsylvania (No. 349 October Term, 1949, in this Court).

There is no Federal Question Involved.

General.

It is clear from the opinion of the Supreme Court of Pennsylvania (especially as such opinion is amplified by the *Hampton Township* case referred to therein) that the validity of no state statute is drawn into question on the ground of its being repugnant to the Constitution, treaties or laws of the United States. It is also apparent that no title, right, privilege or immunity has

been specially set up or claimed under the Constitution, treaties or statutes of the United Sates. The jurisdictional basis for a Writ of Certiorari is not present in these cases (Section 1257 of the Judicial Code, 28 U.S.C. 1257. The Petition for Writ of Certiorari erroneously refers to Section 237 of the Judicial Code, 28 U.S.C.A. Sec. 344, repealed in 1948).

The validity of the state statute, Act 481, under which the taxes were sought to be imposed is not involved.

The Petition for Writ of Certiorari claims a denial of due process under the Fourteenth Amendment to the Constitution of the United States. No such question is involved, and no such question was raised by the petitioner in the courts of Pennsylvania. The petitioner did not even attempt to raise the question of due process through the filing in the Supreme Court of Pennsylvania of a petition for reargument (Rule 84 and Rule 86 of the Supreme Court of Pennsylvania).

The Rulings Questioned by the Petition Involve no Deprivation of Due Process.

The first question presented, as stated in the Petition for Writ of Certiorari, is as follows:

> "1. Did the Supreme Court of Pennsylvania err in holding that the Resolution of the School District imposing a tax of five cents per ton for the privilege of dumping or unloading of slate, stone, slag or other waste materials from the mining of coal or from the manufacture of steel was void, and was said ruling in violation of the due process clause of the Federal Constitution?"

The Supreme Court of Pennsylvania held that the dumping tax (as well as the other taxes) was expressly prohibited by the enabling act since it was a tax on "the privilege of employing such tangible property as is now * * * subject to a State tax," i.e., the Pennsylvania Capital stock tax and the corporate net income tax. The decision rested entirely on the interpretation by the Supreme Court of Pennsylvania of the extent of a statutory grant of taxing power and such interpretation is binding on this Court. *Greenough v. Tax Assessors of Newport,* 331 U.S. 486, 489, 91 L. Ed. 1621, 1625 (1947); *Richfield Oil Corp. v. State Board of Equalization,* 329 U.S. 69, 84, 91 L. Ed. 80, 93 (1946); *Williams v. Kaiser,* 323 U.S. 471, 473, 89 L. Ed. 398, 401 (1944); *Pearson v. Probate Court of Ramsey County, Minnesota,* 309 U.S. 270, 273, 84 L. Ed. 744, 749 (1940). This principle applies to the interpretation of municipal powers. *Georgia Railway and Power Co. v. Decatur,* 262 U.S. 432, 438, 67 L. Ed. 1065, 1073 (1922); and *Railroad Commission of California v. Los Angeles Railway Corp.,* 280 U.S. 145, 152, 74 L. Ed. 234, 310 (1929).

A decision of the state court on state law cannot of itself be a denial of due process of law. *Brinkerhoff-Faris Trust & Savings Co. v. Hill,* 281 U.S. 673, 680, 74 L. Ed. 1107, 1113 (1929):

> "* * * the mere fact that a state court has rendered an erroneous decision on a question of state law, * * * does not give rise to a claim under the 14th Amendment or otherwise confer appellate jurisdiction on this court." (74 L. Ed. 1113)

As this Court said in *Clarke v. McDade,* 165 U.S. 168, 172, 41 L. Ed. 673, 674 (1897):

> "A general statement that the decision of a court is against the constitutional rights of the objecting party or against the 14th Amendment, or that it is without due process of law, particularly when these objections appear only in specifications of error, so called, will not raise a Federal question." (41 L. Ed. 674)

The petitioner must set up some particular constitutional right which has been invaded. Petitioner says:

> "* * * the Supreme Court, in holding this taxing resolution invalid, has disputed (*sic*) the taxing authority of its right under the Fourteenth Amendment to the Constitution of the United States. * * *" (pp. 6, 7)

This might suggest that petitioner claims a constitutional right to impose these taxes. It seems almost too elementary to document the principle that the petitioner has no constitutional right under the Fourteenth Amendment to impose such a tax. Petitioner school district has only those powers which are expressly given to it by the state and such additional implied powers as are necessary to carry out the express powers. *Mulligan v. School District of Hanover Twp.*, 241 Pa. 204 (1912); *Wilson v. Philadelphia School District*, 328 Pa. 225, 195 Atl. 90 (1937); *McQuillin, Municipal Corporations*, § 138; cf. *English v. Robinson Twp. School District*, 358 Pa. 45, 55 A. 2d 803 (1947).

The Petition for Writ of Certiorari states that in adopting these taxes petitioner relied upon a prior decision of the Supreme Court of Pennsylvania approving similar resolutions passed under the same enabling statute (pp. 7 and 8). Petitioner presumably refers to

English v. Robinson Township School District, supra. In that case the Supreme Court of Pennsylvania took original jurisdiction in a case in which the constitutionality of Act 481, the enabling act, was attacked. The enabling act was held to be valid but the authority of the school district to impose the particular resolution was not drawn into question. Furthermore, the tax in that case was imposed on an individual who was not subject to the state capital stock tax or the corporate net income tax. Therefore, the Pennsylvania Supreme Court in these present cases did not overrule or repudiate the principle of that case. A tax on strip mining not involving corporations was also sustained in *Dunkard Township School Tax Case,* 359 Pa. 605, 60 A. 2d 39 (1948).

However, in every case decided by the Supreme Court of Pennsylvania involving a tax under Act 481 on coal mining by corporations or on coal mined by corporations, the tax has been invalidated by the Court as a duplication of a state tax. In addition to the cases at bar, and the *Hampton Township Case, supra,* the following cases are cited to support this statement: *Lawrence Township School District Tax Case,* 362 Pa. 377, 67 A. 2d 372 (1949); *A. E. Dick Contracting Company v. Hazle Township School District,* 362 Pa. 387, 65 A. 2d 381 (1949); *Jamison Coal & Coke Co. v. Unity Township School District,* 362 Pa. 389, 66 A. 2d 759 (1949).

Even if the Pennsylvania Supreme Court had erroneously overruled earlier decisions upon which petitioner relied, no federal question is presented. *Brinkerhoff-Faris Trust & Savings Co. v. Hill,* 281 U.S. 673, 680, 74 L. Ed. 1107, 1113 (1929):

"* * * the mere fact that a state court has * * * overruled principles or doctrines established by previous decisions on which a party relied, does not give rise to a claim under the 14th Amendment or otherwise confer appellate jurisdiction on this court." (74 L. Ed. 1113)

The Contentions Advanced in the Petition with Respect to the Transportation Tax are Without Merit.

These contentions are enumerated in the following questions stated in the Petition:

"2. Did the Supreme Court of Pennsylvania err in holding that the Resolution of the School District imposing a tax on the transportation of coal through the Borough was invalid because the property sought to be taxed did not have an actual situs within the boundaries of said School District, and was said ruling in violation of the due process clause of the Federal Constitution?"

"3. Did the lower court of Washington County err in holding that a tax on the transportation of coal through said school district was invalid because said tax interfered with interstate commerce? (Supreme Court did not rule on this question.)"

"4. Did the lower court of Washington County err in holding that a tax upon the transportation of coal through said school district was unreasonable as said tax may be subject to duplication by other adjoining districts, and was said ruling in violation of the petitioner's rights under the Fourteenth Amendment to the Constitution of the United

States? (Supreme Court did not rule on this question.)"

With respect to the matter of situs it must be remembered that the taxing authority conferred by Act 481 was limited to taxable subjects "within the limits of such political subdivision."

It was argued by Jones & Laughlin before the Supreme Court of Pennsylvania that the transportation tax was a tax on the privilege of moving one's own property over one's own property and was tantamount to a tax on the property itself. *Peoples Natural Gas Co. v. Pittsburgh,* 317 Pa. 1, 175 Atl. 691 (1934); *Thompson v. McLeod,* 112 Miss. 383, 73 So. 193, L.R.A. 1918C, 893, Ann. Cas. 1918A, 674 (1916); *Dawson v. Kentucky Distilleries & Warehouse Company,* 255 U.S. 288, 65 L. Ed. 638 (1921); *Thompson v. Kreutzer,* 112 Miss. 165, 72 So. 891; *Pennsylvania Coal Co. v. Mahon,* 260 U.S. 393, 67 L. Ed. 322 (1922) (Reversing 274 Pa. 489); *Keator v. Clearview Coal Co.,* 256 Pa. 328, 331, L.R.A. 1917E, 672, 100 Atl. 820 (1917).

Based on the equivalence of the transportation tax to a property tax, the Supreme Court of Pennsylvania determined that the coal had no taxable situs within the limits of the political subdivision. An annotation on this subject appears in 110 A.L.R. at page 724. Among the cases cited therein is *Prairie Oil & Gas Co. v. Ehrhardt,* 244 Ill. 634, 91 N.E. 680 (1910). See also 61 C. J. 529 (Taxation § 642) and *Socony Vacuum Oil Company, Inc. v. Borough of Edgewater,* 23 N.J. Misc. 199, 42 A. 2d 775 (1945).

Moreover, a reference to the *Hampton Township* case makes it clear that the Supreme Court of Pennsyl-

vania considered respondent's transportation of coal over its own property in the course of the mining of such coal as an integral part of mining and, hence, not a subject for taxation because of the prohibition imposed by Act 481. In other words, the ruling on situs was an additional ground for invalidating the tax on the transportation of coal. It was not the only ground.

Petitioner seeks to weave the commerce clause into its argument concerning the transportation tax. Respondent's coal moves from the mine face in a Pennsylvania coal mine to a tipple in Pennsylvania, and it is destined for use at mills in Pennsylvania (Record 22a, 24a). The only way in which the question of interstate commerce became involved in the argument is indicated by the following portion of respondent's brief in the Supreme Court of Pennsylvania:

> "The resolution taxes the privilege or transaction of the transportation 'of all coal mined without the boundaries of Centerville Borough but transported within or through the boundaries of Centerville Borough whether said coal is loaded or unloaded within the boundaries of Centerville Borough or without the boundaries of Centerville Borough * * *." (Record 13a)
>
> "The Court found (Record 25a):
>
> '10. A large volume of coal other than appellant's is transported through the Borough of Centerville by common carrier in interstate commerce.'
>
> "The resolution makes no exception for interstate commerce.

"Judge Gibson (of the Quarter Sessions Court) in his opinion said (Record 43a):

> "The terms of the resolution are broad enough to include all coal transported through the Borough of Centerville by public carriers in the course of interstate commerce. This placing of a burden on interstate commerce by various municipalities and school districts is not permissible.' "

The Supreme Court of Pennsylvania did not rule upon any question relating to interstate commerce and no such ruling was necessary to the determination of the case.

In *Southwestern Bell Telephone Co. v. Oklahoma*, 303 U.S. 206, 212, 82 L. Ed. 751, 755 (1937), it was held:

> "We have repeatedly held that it is essential to the jurisdiction of this Court in reviewing a decision of a court of a State that it must appear affirmatively from the record, not only that a federal question was presented for decision to the highest court of the State having jurisdiction but that its decision of the federal question was necessary to the determination of the cause; that the federal question was actually decided or that the judgment as rendered could not have been given without deciding it. * * *" (82 L. Ed. 755)

The petitioner's contention that the ruling of the court as to the transportation tax was in violation of petitioner's rights under the Fourteenth Amendment was not raised in any court and was not necessary to a determination of the case. Since this argument was not

raised in the Pennsylvania courts, this Court has no jurisdiction to consider it. *Wilson v. Cook,* 327 U.S. 474, 480, 482, 483, 90 L. Ed. 793, 799, 800, 801 (1946); *Bailey v. Anderson,* 326 U.S. 203, 206, 90 L. Ed. 36 (1945); *Southwestern Bell Telephone Co. v. Oklahoma, supra; Honeyman v. Hanan,* 300 U.S. 15, 18, 81 L. Ed. 477, 479 (1937), appeal dismissed, 302 U.S. 375, 82 L. Ed. 312 (1937).

ARGUMENTS PRESENTED IN THE PETITION BASED ON THE ALLEGED IMPORTANCE OF THE CASE AND ON CONSIDERATIONS OF HARDSHIP ARE WITHOUT FOUNDATION IN THE RECORD, INVOLVE NO FEDERAL QUESTION, AND ARE WITHOUT MERIT.

The record contains no evidence to support the statements in the Petition for Writ of Certiorari (p. 6) "* * * that the dumping of slate material in said school district not only causes depreciation in assessed valuation of real estate but also causes the school district to receive less taxes, due to the decreased valuation of real estate. * * *," or that the dumping constitutes a fire hazard.

The pleadings contain no allegation and there is no evidence in the record to support the statements in the Petition for Writ of Certiorari that "It (respondent) at one time was the owner of hundreds of homes where coal miners lived and rented said homes. Today all of the homes have been sold and the coal company pays very little taxes. The school board was of the opinion that the corporation should pay its just share of taxes and, therefore, imposed this tax."

Neither of these arguments presents a federal question.

The Petition for Writ of Certiorari states that the decision will affect *hundreds* of political subdivisions which have passed similar taxes. There is nothing in the record to support this statement. As a matter of fact (and this statement is not based on the record), out of over 5,000 school districts, townships, boroughs, towns and cities given taxing power under Act 481, fewer than 100 have passed taxes on incidents of coal mining.

Furthermore, Act 481 was amended April 28, 1949, so as to leave no doubt that these taxes are prohibited. The amendatory act (Act No. 246 of 1949) prohibits a tax:

> "* * * on minerals * * * or on the preparation or processing thereof * * * or on any privilege, act or transaction related to the * * * preparation or processing of minerals * * * or on the transportation, loading, unloading or dumping or storage of such goods, articles, products or by-products; * * *"

This certainly makes the case of no future importance.

CONCLUSION.

It is respectfully submitted that the Petition for Writ of Certiorari should be denied.

Dated: October 27, 1949.

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